

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

SHELDON SMITH,

Petitioner,

: Case No. 3:13-cv-330

- vs -

District Judge Thomas M. Rose  
Magistrate Judge Michael R. Merz

WARDEN, Chillicothe Correctional  
Institution,

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Respondent.

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**DECISION AND ORDER DENYING MOTION FOR DEFAULT  
JUDGMENT AND EVIDENTIARY HEARING**

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This case is before the Court on Petitioner's Motion for Default Judgment and Request for Evidentiary Hearing (Doc. No. 51).

Petitioner notes that, on his Motion, the Court ordered expansion of the record and allowed Respondent time from Petitioner's filing of a supplemental memorandum in support of his motion to amend to file a memorandum in opposition (Doc. No. 32, PageID 1181). Petitioner in fact filed his Memorandum in Support of Motion to Amend on November 26, 2014 (Doc. No. 40). Under S. D. Ohio Civ. R. 7.2, Respondent's time to file a memorandum thus expired on December 22, 2014. Petitioner calculates the date as December 18, 2014 (Motion, Doc. No. 51, PageID 1339), but that does not accord Respondent the extra three days allowed by Fed. R. Civ. P. 6. Respondent filed no memorandum by the later date and the Magistrate Judge proceeded to file a Supplemental Report and Recommendations on December 24, 2014 (Doc. No. 47).

S. D. Ohio Civ. R. 55 has no application to these circumstances. By not filing an

additional memorandum within the time allowed, Respondent merely forfeited his right to brief the issues further and not the whole case. For the reasons set forth in the Supplemental Report and Recommendations and Second the Supplemental Report and Recommendations, Petitioner is not entitled to habeas corpus relief in this case.

The Motion for Default Judgment is DENIED.

January 13, 2015.

s/ *Michael R. Merz*  
United States Magistrate Judge